

September 13, 2005

Howard Weinberg
General Counsel
New Motor Vehicle Board
[Address Redacted]
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-05-167

Dear Mr. Weinberg:

This letter is in response to your request for advice on behalf of members of the New Motor Vehicle Board (“Board”) regarding the gift provisions of the Political Reform Act (the “Act”).¹ Because you do not identify the members of the Board, we are rendering you informal assistance.²

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QUESTION

May members of the Board accept air travel on a private aircraft from a dealer who will be traveling to Sacramento for a retirement reception on September 20, 2005?

CONCLUSION

The officials may accept the air travel as gifts (subject to the gift limits of the Act) and must report the amount of the gifts on their Statement of Economic Interests (“Form 700’s”). To determine the value of the gifts, the Board members may use the current commercial fare for an equivalent flight or the cost of charter airfare divided by the number of passengers.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

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² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c), copy enclosed.) Informal assistance may be requested by a person who is an authorized representative of a public official, or by a person who has a duty to advise public officials about their responsibilities under the Act. (Regulation 18329(c)(1).)

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FACTS

The Board's conflict-of-interest code requires members to report gifts from dealers on their Form 700.

The dealer-owner of the private aircraft is a former board member and the Board President, and currently has no business pending before the Board. The air travel on September 20, 2005, aboard the private aircraft is being offered to all board members, who along with the owner of the aircraft will also be attending a retirement reception for the Board's Executive Director. The board members will also be attending a board meeting scheduled for the next day, September 21, 2005.

ANALYSIS

Receipt of Gifts:

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by candidates and public officials in three ways:

First, the Act places *limitations on the acceptance of gifts* from certain sources over a set limit. The *current limit is \$360* or more from a single source in a calendar year. (Section 89503, regulation 18940.2.) Additionally, the Act prohibits any gift of \$10 or more in a calendar month from lobbyists or lobbying firms.³ (Sections 86203, 86204.)

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Secondly, so that the public is made aware of any potential influences from gifts, the *Act imposes reporting obligations* on candidates and public officials, requiring that any *gift of \$50 or more* from certain sources *be reported and disclosed* on a public document, referred to as a Statement of Economic Interests. (Sections 87200, 87203, 87207, 87300, and 87302.)

Finally, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift or gifts with an aggregate value of \$360 or more provided to, received by, or promised to the public official within 12 months prior to the time the decision is made. (Sections 87100, 87103(e), regulations 18700, 18703.4.)

Section 82028 defines a gift as "any payment that confers a personal benefit on the recipient." Section 82044 defines payment, in part, as any "rendering of ... services or anything else of value, whether tangible or intangible."

³ For purposes of this analysis, we assume that the lobbyist limits do not apply. If it does apply, please contact us to seek further advice. Also note that comments in regulation 18945.1, state "acceptance of a pass or discount from a transportation company by a public officer, other than a Public Utilities Commissioner, may result in forfeiture of the official's office pursuant to Article XII, Section 7 of the California Constitution."

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Under the facts you have presented, in accepting private airplane transportation, the members of the Board will have received gifts from the owner/dealer and must report these gifts on their Form 700 if the value is \$50 or more.

In addition, because the officials are members of a state board and are required to report the receipt of gifts from dealers on their Form 700, they *may not accept gifts from dealers in any calendar year with a total value of more than \$360*, unless an exception to the gift limit applies. (Section 89503(c).) Your facts do not suggest that an exception applies. (See regulations 18950.1-18950.3.)

Also, please note that for purposes of disqualification under Sections 87100 and 87103, public officials who receive gifts totaling \$360 or more from a single source within one year of a governmental decision, will have an economic interest in the donor of such a gift. Thus, if the Board members receive \$360 or more in gifts⁴ from the dealer/aircraft owner, they may have a disqualifying financial interest in a decision involving the dealer.

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Valuation of Gifts:

Regulation 18946 provides that “gifts shall be valued at fair market value as of the *date of receipt or promise*.” Regulation 18941(a) states that “a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.”

To determine the fair market value of the private air transportation, board members may use either the commercial fare for an equivalent flight or the charter airfare divided by the number of passengers. (*In re Stone* (1977) 3 FPPC Ops. 52; *Langston* Advice Letter, No. A-90-041; *Israel* Advice Letter, No. A-90-125; *Bagatelos* Advice Letter, No. I-90-561; *Paul* Advice Letter, No. I-03-218; *Alamao* Advice Letter, No. A-05-117.)

Return of Gifts:

Section 82028(b)(2) states that the term “gift” does not include:

“Gifts which are not used and which, within 30 days after receipt, are ... returned to the donor ...

Regulation 18943(a) sets out how to apply section 82028(b)(2). Subdivision (a)(4) pertains to your question and provides:

⁴ Of course, a gift of more than \$360 would be in excess of the limit in section 89503 and would constitute a gift limit violation.

“(a) General Rule for Return, Donation, or Reimbursement of a Gift. A gift is neither accepted nor received if it is returned, donated, or reimbursed in any manner set forth below:

{ ... }

(4) The recipient, within 30 days of receipt or acceptance, reimburses the donor, or the donor’s agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expenses which must be disclosed is reduced by the amount of the reimbursement.”

Under the facts you have presented, the Board members must report on their Form 700s the current fair market value of the flight to Sacramento or the charter airfare divided by the number of passengers. The board members will need to report the value of the gift at the time it was received. (Regulation 18941.) If the board members reimburse the owner of the aircraft within 30 days of the receipt of the gift, they need only report any cumulative non-reimbursed amounts totaling \$50 or more received during the reporting period. Moreover, this would reduce the value of the gift for limit and disqualification purposes.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

Enclosure
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